

PRIMUS RESOURCES, L.C.

IBLA 97-181

Decided June 24, 1998

Appeal from a decision of the Nevada State Office, Bureau of Land Management, dismissing protest of reinstatement of mining claims. NMC 72356-NMC 72360; NMC 456822-NMC 456826.

Affirmed.

1. Contests and Protests: Generally--Mining Claims: Abandonment--Mining Claims:
Contests--Rules of Practice: Private Contests

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his location of a claim following BLM's reinstatement of a rival claimant's claims which had erroneously been declared abandoned and void.

APPEARANCES: Tim Neal, Primus Resources, L.C., for Appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Primus Resources, L.C. (Primus) has appealed from a December 23, 1996, Decision of the Nevada State Office, Bureau of Land Management (BLM), dismissing its protest of BLM's reinstatement of the Retreat No. 1-5 and the Black Boy No. 1-5 (NMC 456822-NMC 456826 and NMC 72356-NMC 72360) mining claims.

On July 7, 1994, BLM issued a Decision to William D. Peterson declaring the above claims abandoned and void under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992) and implementing regulations. The Act provides, subject to various conditions, for an exemption from the payment of mining claim rental fees for claimants holding 10 or fewer claims, a provision generally referred to as the small miner exemption. The BLM declared Peterson's claims abandoned and void because he held more than 10 claims, contrary to the Act and 43 C.F.R. § 3833.1-6. Peterson did not appeal the Decision.

On August 16, 1996, BLM issued a Decision vacating its July 7, 1994, Decision, reinstating the claims, and accepting Peterson's relinquishment, as of July 27, 1993, of claims in excess of the statutorily required 10 or fewer necessary for qualification as a small miner.

The BLM's decision notified Peterson that a protest had been filed against reinstatement of the claims and that BLM had dismissed the protest with right of appeal to this Board.

In the decision dismissing the protest, presently before us on appeal, BLM responded to arguments made by Primus against reinstatement of Peterson's claims. BLM noted that Peterson had shown that he did not intend to hold more than 10 claims on the date he submitted his certifications of exemption, and that he had complied with the requisite filing requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994).

In its Statement of Reasons (SOR), Primus states that it staked and filed five lode mining claims, SOL Nos. 1-5 (NMC 714338-NMC 714342) "upon ground that was opened to mineral entry by [BLM's July 7, 1994, Decision]" declaring Peterson's claims on the same lands abandoned and void. Primus points out that Peterson did not appeal the July 7, 1994, Decision. Primus asserts that it only became aware that its "right of title * * * was clouded" in March 1996, when it learned of BLM's intention to reinstate Peterson's claims. (SOR at 2.)

Primus notes that it expended labor and means in maintaining its own claims, and that as a result of BLM's action, Peterson is restored to his former status while Primus is placed into a situation of disadvantage. Primus contends that BLM's decision to void Peterson's claims was correct and that its subsequent decision reinstating those claims was in error. (SOR at 3.)

[1] This appeal addresses possessory primacy as between mining claimants with claims to the same lands. The Department is without authority to determine the question of right of possession to claims as between rival mining claimants. The BLM's policy is that it "will not become the forum for the resolution of private party disputes between rival claimants." (BLM Manual at 3833.41B.) A suit filed in a court of competent jurisdiction is the proper venue for resolving such disputes. Sandra Memmott (On Reconsideration), 93 IBLA 113, 115 (1986); IMCO Services, 73 IBLA 374, 376 (1983), and cases cited. A U.S. Code section, 30 U.S.C. § 30 (1994), provides a method by which a court of competent jurisdiction is to determine the right of possession between two or more mining claimants. This statute gives the court jurisdiction of suits when the parties are all mining claimants and when the land embraced in the claim is unpatented Government land. That is the situation here. The BLM properly dismissed Primus' protest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

T. Britt Price
Administrative Judge

